

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

INITIAL STATEMENT OF REASONS

December 21, 2001

RH-402

**California Code of Regulations
Title 10, Chapter 5**

INTRODUCTION

Pursuant to California Insurance Code section 1861.02, subdivision (e), California Insurance Commissioner Harry Low ("Commissioner") proposes amendments to California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, entitled "Rating Factors". The original regulations were promulgated to provide optional automobile rating factors to insurers and other licensees as provided in Insurance Code section 1861.02, subdivision (c). Specifically, the Commissioner proposes to provide a definition of "persistency," as found in California Code of Regulations, title 10, section 2632.5, subdivision (d)(11).

The Commissioner believes that the following amendments to the regulations are necessary to ensure that insurance carriers do not consider a consumer's lack of prior insurance for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF REGULATION

California Insurance Code section 1861.02, subdivision (a)(4) provides that the Commissioner may adopt, by regulation, optional automobile rating factors that have a substantial relationship to the risk of loss. Optional rating factors adopted by the Commissioner may be used to determine automobile insurance rates and premiums. The Commissioner previously promulgated such regulations at California Code of Regulations, title 10, chapter 5, subchapter 4.7, section 2632.5. One optional rating factor promulgated by the Commissioner allows an insurer to utilize "persistency" as an optional rating factor. (Cal.Code Regs., tit. 10, § 2632.5, subd. (d)(11).) Persistency is not defined in the California Code of Regulations.

The Commissioner has determined that insurers have adopted differing interpretations of the meaning of persistency as an optional rating factor. Some insurers have interpreted persistency to mean the length of time a consumer has continuously maintained automobile insurance exclusively with that insurer. Other insurers have defined persistency more broadly to include coverage by different insurers, so long as there was not a lapse in coverage. Some of these

insurers may have impermissibly required consumers to provide evidence of prior insurance to show that the consumer was “persistently” covered by one insurer or another over time.

California Insurance Code section 1861.02, subdivision (c) provides that the absence of prior insurance cannot be used, in and of itself, to determine automobile rates, premiums, or insurability generally. The Commissioner is empowered under Insurance Code section 1861.02, subdivision (e) to adopt regulations to implement Insurance Code section 1861.02.

The Commissioner has determined that certain modifications to the use of persistency as an optional rating factor are necessary to effectively prevent the use of prior insurance for the assignment of automobile rates, premiums or insurability. The Commissioner proposes to amend California Code of Regulations, title 10, section 2632.5, subdivision (d)(11). The proposed amendment to subdivision (d)(11) will require each insurer to consider only the length of time a consumer has been continuously covered with the present insurer’s company when using persistency as an optional rating factor.

IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the adoption of this regulation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of this regulation would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner has not identified any reasonable alternative to carry out the purpose for which this regulation is proposed or that would be as effective or less burdensome to affected private persons or small businesses than the proposed regulations.

ECONOMIC IMPACT ON BUSINESS

The Department of Insurance has made an initial determination that the adoption of this regulation does not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The types of businesses that this regulation concerns are insurers licensed to market personal automobile insurance in the State of California. A small percentage of insurers with rating guidelines that currently violate Insurance Code, section 1861.02, subdivision (c) will have to file modifications to their existing class plans. These insurers will also have to comply with their newly modified rating guidelines. Insurers regularly file modifications to their class plans in the course of doing business, and therefore, the changes required by this regulation will not be significant.